THE HON'BLE SRI JUSTICE S.ANANDA REDDY

Writ Petition No.32308 of 1997

07.08.2007

Between

K.Bharathi

…Petitioner

And

Electronic Corporation of India Limited, ECIL Cross Roads, Hyderabad and others.

…Respondents

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

Writ Petition No.32308 of 1997

ORDER:

This writ petition is filed by the petitioner seeking a writ of Mandamus directing the respondents to pay her the differential amount of wages from the date of suspension to the date of revocation i.e., from 05.04.1993 to 11.07.1997; to promote her to the post of Office Assistant from the date on which her juniors were promoted and accordingly fix her seniority and grant increments; to pay the arrears of salary and back wages for the period of suspension and also to grant consequential and ancillary benefits.

At the time of hearing, it is however stated that

except the first relief, all other reliefs have already been granted by the respondent-company itself. Therefore, the present writ petition is confined only to the first issue i.e., payment of the differential amount of pay or wages during the period of suspension, after deducting subsistence allowance already paid to the petitioner.

It is stated that the petitioner initially appointed as an Apprentice and later appointed as UDC in the respondent-company. While so, the petitioner was placed under suspension by the proceedings of the second respondent, dated 05.04.1993, based on a police report that the petitioner was involved in a criminal offence in S.C.No.24 of 1994. It is stated that in the said criminal case though the main accused, who is the brother of the petitioner, was convicted, the petitioner was acquitted of the offence alleged against her. As a result of acquittal, the petitioner made an application to the respondents and pursuant to the same, the second respondent issued proceedings, dated 12.07.1997, revoking suspension and directing the petitioner to report for duty. Thereafter, the petitioner was even promoted as Office Assistant from 15.07.1997. However, insofar as the period of suspension is concerned, proceedings were issued treating the said period of suspension i.e., from 05.04.1993 to 11.07.1997, as *dies non* and therefore, the

petitioner is not entitled to any further payment as she was paid subsistence allowance during the said suspension period. Aggrieved by the same, the present writ petition is filed.

At the time of hearing, the learned counsel for the petitioner relied upon Rule 31(1) of the Conduct, Discipline and Appeal Rules of the first respondent-company (for short 'the Rules) which reads as under:

> **RULE-31**: **Treatment of the period of suspension**:
>
> 1) When the employee under suspension is reinstated, the competent authority may grant to him the following pay and allowances for the period of suspension.
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> i) If the employee is exonerated and not awarded any of the penalties mentioned in Rule-32, the full pay and allowances which the employee would have been entitled to if the employee has not been suspended, less the subsistence allowance paid to the employee; and
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> ii) If the employee is not exonerated, such proportion of pay and allowances as the competent authority may decide.
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> 2) In a case falling under sub-clause (i) the period of absence from duty will be treated as a period spent on duty. In a case falling under sub-clause(ii) it will not be treated as a period spent on duty unless the competent authority so directs.

and contended that if the employee is exonerated and not awarded any penalties as mentioned in Rule 32, the full pay and allowances have to be paid to the employee. According to the learned counsel, since the petitioner was

exonerated in the criminal case registered against her for which she was put under suspension, she is entitled to the benefit of the said Rule for payment of full pay and allowances and as the said relief was denied by the respondents illegally, the claim of the petitioner has to be allowed in accordance with the statutory Rules.

Sri M.Lakshman Sarma, the learned counsel for the respondents, sought to contend that the relief contemplated under Rule 31(1) is applicable only in the cases where the proceedings are initiated departmentally for the alleged misconduct of the employee and during the said enquiry if the employee kept under suspension was ultimately found to be not guilty, in such circumstances only, the employee has to be paid full pay with allowances and not in cases of present nature. It is also stated that the penalties contemplated under Rule 32 are only in the departmental proceedings. In the present case, no departmental proceedings were initiated and on the other hand, the petitioner was kept under suspension in view of her involvement in a criminal case which was registered against her along with her brother. Therefore, Rule 31 of the Rules has no application. It is further contended that as soon as the petitioner was acquitted of the criminal case, she was reinstated and even promotion was also given to her which was even considered during the period

of her suspension and immediately after revocation of the suspension, the promotion was given effect to. Therefore, there cannot be any grievance with reference to promotion. However, in view of the peculiar circumstances, the petitioner is not entitled to payment of any further amount.

Heard both sides and considered the material on record.

The claim of the petitioner is that the action of the respondents in treating her as *dies non* during the period of suspension is illegal and unsustainable in terms of Rule 31 of the Rules. But, a perusal of the said Rule clearly shows that the said Rule is applicable only when the proceedings are initiated departmentally proposing to impose a punishment for the alleged misconduct committed by an employee. In the present case, no departmental proceedings were initiated, except suspending the petitioner for her involvement in a criminal case, where she was even taken into custody and kept for more than 48 hours. In that view of the matter, the Rule referred to and relied upon by the petitioner has no application. The petitioner admittedly did not render services during the period of her suspension and in fact, she was paid subsistence allowance as per the Rules.

Therefore, the impugned order passed by the first respondent-company treating the petitioner as *dies non* during the period of her suspension is proper and just, and the petitioner is not entitled to claim any further payment.

The writ petition is accordingly dismissed. No costs.

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07.08.2007

VGB